

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

COMPLAINT ON POST E.C.S.

Docket No. C99-1

**UNITED STATES POSTAL SERVICE ANSWER IN OPPOSITION TO MOTION OF
UNITED PARCEL SERVICE FOR CLARIFICATION, OR, IN THE ALTERNATIVE,
FOR RECONSIDERATION AND MODIFICATION OF P.O. RULING NO. C99-1/3
CONCERNING THE SCOPE OF THE FIRST PHASE OF THIS PROCEEDING
(July 26, 1999)**

I. INTRODUCTION

On July 7, 1999, the Presiding Officer issued P.O. Ruling No. C99-1/3 granting in part the Postal Service's Motion for Partial Reconsideration of P.O. Ruling No. C99-1/2. The ruling addresses three issues. First, the Presiding Officer directed that the procedural schedule in this docket be phased, with the initial phase focused on the issue of whether Post E.C.S. is a postal service. Second, the Presiding Officer issued a procedural schedule for the first phase of the proceeding, but did not specify what the subject matter or purpose of subsequent phases of the proceeding would entail. Third, the Presiding Officer declined to issue a ruling addressing what form the decision resolving the first phase will take.¹

On July 15, UPS filed Motion of United Parcel Service for Clarification, or, in the Alternative, for Reconsideration and Modification of P.O. Ruling No. C99-1/3 Concerning the Scope of the First Phase of This Proceeding (hereinafter "Motion"). In its Motion, UPS seeks clarification of the Ruling as to whether the first phase of the

¹ In P.O. Ruling No. C99-1/7, the Presiding Officer certified the Postal Service's appeal of the latter two issues to the Commission.

proceeding is intended to embrace the international nature of Post E.C.S. If the Ruling was intended to exclude this inquiry, UPS seeks reconsideration to expand the scope of the first phase of this proceeding to include discovery on the question of whether Post E.C.S. is an international or domestic service. The Postal Service hereby responds to UPS's Motion. As discussed below, the Postal Service does not share UPS's interpretation of Ruling No. C99-1/3, and opposes its alternative request for reconsideration and modification.

II. UPS REQUEST FOR CLARIFICATION

The Postal Service does not share UPS's interpretation of P.O. Ruling No. C99-1/3. The Postal Service interprets the Ruling to exclude discovery on the domestic versus international nature of Post E.C.S., at least during the first phase of this proceeding. There is absolutely no mention in the Ruling that the scope of the first phase extends to the international nature of Post E.C.S. To the contrary, the Ruling makes clear that discovery and other fact finding in the "initial phase" is limited to "matters bearing on the 'postal' aspects of Post E.C.S. . . ." P.O. Ruling No. C99-1/3 at 3. The Postal Service submits that the postal/nonpostal characteristics of a service can be evaluated independently of its domestic or international characteristics. Given that the Ruling contemplates subsequent "phases" of this proceeding whose purpose and scope have not yet been revealed to the participants, it is manifestly reasonable to conclude that the Ruling intended to exclude the international question from this proceeding. The Postal Service accordingly requests the Presiding Officer to affirm this interpretation of the Ruling.

III. UPS MOTION FOR RECONSIDERATION

The Postal Service opposes UPS's attempt to enlarge the scope of the first phase of the proceeding, or any other phase of this proceeding, to embrace an inquiry as to whether Post E.C.S. is an "international" service. First, implicit in UPS's claim is the belief that the Commission's subject matter jurisdiction extends so far as to include the authority to pass on the merits of whether a service is classified as "domestic" or "international." UPS cites absolutely no legal authority in support of this proposition. This view is, moreover, at odds with the Postal Reorganization Act and judicial precedent. 39 U.S.C. § 407; *Air Courier Conference of America/International Committee v. U.S. Postal Service*, 959 F.2d 1213 (3rd Cir. 1992) ("ACCA"). Congress has conferred upon the Postal Service the sole and unique authority to establish, with Presidential consent, "rates of postage or other charges on mail matter conveyed between the United States and other countries." 39 U.S.C. § 407(b). Such authority is exercised independently of any provision in chapter 36 of Title 39. *ACCA*, 959 F.2d 1220. In *ACCA*, the Third Circuit Court of Appeals explained that the Postal Service's authority under section 407 operates independently of chapter 36:

[Section 407] gives the Postal Service the authority, with the consent of the President, to "establish the rates of postage or other charges on mail matter conveyed between the United States and other countries." The Postal Service says this plainly "excepts" international rates from the ultimate power section 3621 gives the Governors. Again, we think the Postal Service has the better of the argument. If the power over international rates that section 407(a) gives the Postal Service is subject to the requirements of chapter thirty-six, we would expect to find an analogous section giving the Postal Service power to establish, not just request, domestic postage rates. We find none and instead see that

chapter thirty-six permits the Postal Service to do no more than request changes in domestic rates. Section 407 plainly gives the Postal Service the ability to establish rates of postage for international mail.

Id. 959 F.2d at 1220 (citation omitted). The Commission is given absolutely no role in international ratemaking and classification matters.² Rather, its authority over "domestic" rates is circumscribed by the Postal Service's request. 39 U.S.C. § 3662. The Postal Service retains the sole authority to determine what is, and what is not, included in the request. The logical corollary of that authority is the classification of a service as domestic or international. A contrary conclusion would fundamentally deprive the Postal Service of its international rate authority under section 407.

The Commission's subject matter jurisdiction notwithstanding, the Postal Service submits that including the international question in this proceeding would defeat the Presiding Officer's interest in "achiev[ing] judicial efficiency while minimizing the potential for unnecessary commercial harm to participants." P.O. Ruling No. C99-1/3 at 3. This proceeding has now been divided into phases, and the Postal Service submits that the first phase could be concluded much more expeditiously and efficiently if its scope is strictly confined to an inquiry on the postal/nonpostal question. Broadening the inquiry to include the international nature of the service would contravene the Presiding Officer's intent, and encumber this proceeding with numerous disputes raised by UPS discovery. Discovery on the international aspects opens a host of issues that tread into many commercially sensitive topics, and increases substantially the prospect

² The Commission's responsibility in the international area is limited to the preparation of an annual report for Congress on the costs, revenues, and volumes of international
(continued)

of commercial harm. Invitation to conduct discovery on the international aspects of Post E.C.S. will result in broad-based fishing expeditions into commercially sensitive information that will not only improve UPS's competitive position, but also give UPS a new avenue to gain intelligence to enable it to make informed investment decisions.³ In this regard, the Postal Service urges the Commission to exercise extreme caution by limiting the scope of this proceeding in order to preserve the integrity of the complaint process and the commercial information of the Postal Service, the International Post Corporation, and the foreign posts, as well as their customers and suppliers.

CONCLUSION

WHEREFORE, the Postal Service respectfully requests that the Presiding Officer (i) affirm that the first phase of this proceeding is not intended to embrace the inquiry on whether Post E.C.S. is domestic or international, and (ii) reject UPS's attempt to enlarge the scope of this proceeding to permit inquiry into whether Post E.C.S. is an international or domestic service.

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mail. 39 U.S.C. § 3663.

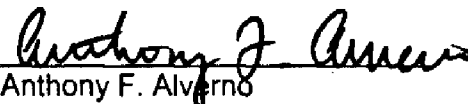
³ See Tumbleweed Communications Corporation Press Release, *United Parcel Service Invests \$4 Million in Tumbleweed* (July 21, 1999), posted at internet site <www.tumbleweed.com/press/twpres62.htm> A copy is attached.

The undersigned counsel has sent a copy of this document to counsel for complainant via facsimile transmission.

UNITED STATES POSTAL SERVICE

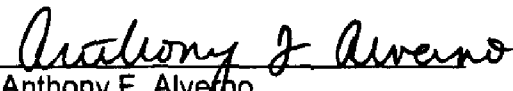
By its attorneys:

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.


Anthony F. Alverno

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July 26, 1999

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Press Release

United Parcel Service Invests \$4 Million In Tumbleweed

Tumbleweed's IME Technology Plays Integral Role in UPS' Online Delivery Services

Redwood City, CA - July 21, 1999 - Tumbleweed Communications Corp., a leading provider of secure Internet communications services for e-commerce, today announced it recently closed a \$4 million investment from United Parcel Service, Inc. (UPS), the world's largest express carrier and package delivery company.

United Parcel Service launched the UPS Document ExchangeSM service one year ago, a secure Internet communications service for business-to-business commerce based on Tumbleweed's Integrated Messaging Exchange[™] (IME[™]) technology. UPS Document Exchange enables secure, reliable digital document delivery using the Internet and open standards. It includes encryption-based security and password protection, real-time tracking and delivery confirmation, at a fraction of the cost of a physical overnight delivery.

"In today's new business climate, e-commerce opportunities are exploding and we are keeping close watch on these evolving market requirements," said Dale Hayes, UPS vice president for electronic commerce and technology marketing. "UPS Document Exchange has opened up new e-commerce opportunities for UPS, and we believe that Tumbleweed's technology will enable us to continue to deliver products that will keep us at the forefront of the next generation of e-commerce services."

UPS Document Exchange celebrated its first year of service last month, and UPS recently announced UPS Document Exchange version 3.0, which is built on the latest release of Tumbleweed IME. Hewlett-Packard and UPS recently partnered to offer the combined functionality of UPS Document Exchange and the HP 9100C Digital Sender. These combined solutions enable paper documents to be sent and tracked electronically over the Internet or a private network with the security of UPS Document Exchange.

"We are very pleased to have UPS extend our partnership with Tumbleweed by making an equity investment," said Jeffrey C. Smith, president and CEO of Tumbleweed. "UPS has become a force in electronic commerce, combining leading technology with an extensive portfolio of services."

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With this new investment, Tumbleweed closed its series C round of funding, having successfully raised a total of \$20 million, including \$18 million from new investors UPS and Hikari Tsushin. Tumbleweed's existing venture investors, including August Capital, Draper Fisher Jurvetson, Adobe Ventures L.P., Bessemer Venture Partners, Sofinnova, Hambrecht & Quist and France Telecom, also participated in this round. Hambrecht & Quist's private equity group managed the financing.

With the newly committed funds, Tumbleweed will continue to address the market for secure e-mail-based business solutions both domestically and abroad. The company's online delivery solution - the Tumbleweed Integrated Messaging Exchange (IME) - brings legacy business communications online, integrating with existing e-mail systems, front-office applications, and back-end systems. With Tumbleweed IME, businesses can securely deliver transaction confirmations, statements, invoices and other sensitive records to any recipient with Internet access.

About UPS

United Parcel Service of America, Inc., the world's largest express carrier and package delivery company, is a leading commerce facilitator, offering an unmatched array of traditional and electronic commerce services. By offering fully integrated, Web-enabled business-to-business solutions and working with other e-commerce leaders, UPS is changing the way people do business. Paving the way for future Web-based commerce, UPS pioneered technologies that allow for secure, encrypted and trackable digital file deliveries. The company has won numerous awards for its Web site and information technology infrastructure, including two Computerworld Smithsonian Awards. The Atlanta-based company operates in more than 200 countries and employs more than 330,000 people worldwide. UPS reported 1998 annual revenues of \$24.8 billion. You can visit the UPS Web site at www.ups.com

About Tumbleweed Communications Corp.

Tumbleweed Communications is a leading provider of secure online communication services. Tumbleweed Integrated Messaging Exchange (IME) includes all the components necessary to develop and deploy online business applications involving the delivery of files and documents. Working with existing e-mail systems and online applications, Tumbleweed IME powers universal messaging solutions ranging from confidential, trackable business exchanges to secure, automated transactions.

Founded in 1993, Tumbleweed is a privately held corporation headquartered in Redwood City, California. Tumbleweed customers include the Chase Manhattan Bank, the European Commission, United Parcel Service (UPS), Pitney Bowes, and NTT. Tumbleweed partners include Sun Microsystems, Oracle, VeriSign, and RSA. Additional information about Tumbleweed Communications can be found at www.tumbleweed.com.

Except for the historical information contained herein, the matters discussed in this press release may constitute forward-looking statements that involve risks and uncertainties that could cause actual results to differ materially from those projected. In some cases, forward-looking statements can be identified by terminology such as "may," "will," "should," "potential," "continue," "expects," "anticipates," "intends," "plans," "believes," "estimates," and similar expressions. The company assumes no obligation to update information contained in this press release.

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Tumbleweed is a registered trademark and Integrated Messaging Exchange and IME are trademarks of Tumbleweed Communications Corp. UPS is a registered trademark and UPS Document Exchange is a service trademark of United Parcel Service of America, Inc.

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